

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
- EASTERN DIVISION -**

2006 APR 26 P 3: 32

LORETTA O. BURKS,

Plaintiff,

vs.

**VANNA DUONG, doing business
as HUDDLE HOUSE OF
ROANOKE,**

Defendants.

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA.

CIVIL ACTION NO.: CV

3:06cv383-A

NOTICE OF REMOVAL

Pursuant to 28 U.S. C. §1332, 1441 and 1446, defendant, identified in plaintiff's Complaint as Vanna Duong, d/b/a Huddle House of Roanoke, and more properly identified a Vanna's Food Management, Inc., d/b/a Huddle House, hereby petitions this Court for removal of this action from the Circuit Court of Randolph County, Alabama, where it is now pending as Civil Action number CV-2006-054, to the United States District Court for the Middle District of Alabama, Eastern Division. As grounds for this removal, defendant would show as follows:

1. This action was commenced on or about March 27, 2006 by the filing of a Summons and Complaint in Civil Action No: CV-2006-054 in the Circuit Court of Randolph County, Alabama.

2. The initial pleading setting forth the plaintiff's claim for relief was first received by the defendant on or about April 1, 2006. No further pleadings have been served or filed as of the date of this notice. A copy of the plaintiff's Summons and Complaint is submitted herewith as Exhibit "A".

3. The plaintiff's Complaint arises out of plaintiff's claims for damages associated with plaintiff's claims of personal injuries she alleges to have sustained as a result of a slip and fall which she contends occurred on or about April 17, 2005.

4. The plaintiff, Loretta O. Burks, is, upon information and belief, a resident of the State of Alabama.

5. The defendant, Vanna's Food Management, Inc., d/b/a Huddle House, was at the time of the filing of the Complaint, and still is, a foreign corporation with its principle place of business in Suwanee, Georgia. The defendant, Vanna's Food Management, Inc., d/b/a Huddle House is not a resident of the State of Alabama within the meaning of the Acts of Congress creating diversity and jurisdiction in the federal courts. (See Affidavit of Vanna Duong, attached hereto as Exhibit "B").

6. Pursuant to 28 U.S.C. §1446(b) this Notice of Removal has been filed within thirty (30) days after service of Summons and Complaint on the first served defendant, Vanna's Food Management, Inc., d/b/a Huddle House.

7. Removal of this action is proper based on the Court's diversity

jurisdiction. Removal of an action to federal court is proper when there is diversity of citizenship among those parties who are “properly joined” and served. 28U.S.C. §1441.

8. The time to ascertain whether the requisite jurisdictional amount necessary to invoke federal jurisdiction is present, is at the time the Petition for Removal is filed. See, *Ellis v. Logan Co.*, 543 F. Sup. 586 (W.D. KY 1982). A defendant may remove a suit to federal court notwithstanding the plaintiff’s failure to state an amount in controversy which would establish federal jurisdiction; however, in the current litigation, the plaintiff’s Complaint specifically seeks damages in the sum of \$250,000.00 plus costs.

9. Given that the plaintiff’s ad damnum clause in plaintiff’s Complaint exceed the \$75,000.00 jurisdictional minimum limit for diversity actions, and given the fact that the parties to the current litigation are diverse, removal of this action is proper.

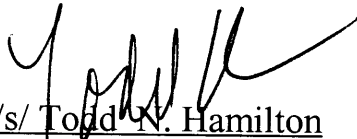
10. The plaintiff has alleged causes of action under the theories of negligence, and has alleged that the plaintiff has sustained serious injuries as a result of such alleged negligence.

11. A true and correct copy of this defendant’s Notice of Removal and Petition of Filing Removal is being filed with the Clerk of the Circuit Court of

Randolph County, Alabama, and is being served upon the plaintiff through her respective counsel as required by law.

12. There are no parties to this litigation other than the plaintiff, Loretta O. Burks, and defendant, Vanna's Food Management, Inc., d/b/a Huddle House.

WHEREFORE PREMISES CONSIDERED, the defendant prays that this Court will make any and all Orders necessary to effect the removal of this cause from the Circuit Court of Randolph County, Alabama to the United States District Court for the Middle District of Alabama.



/s/ Todd N. Hamilton

Todd N. Hamilton (HAM041)



/s/ Robert B. Stewart

Robert B. Stewart (STE124)

Attorneys for Defendant, Vanna's Food Management, Inc., d/b/a Huddle House

OF COUNSEL:

SMITH, SPIRES & PEDDY, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of April, 2006, I electronically filed the

foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

S. Sanford Holliday
Post Office Box 727
Roanoke, Alabama 36274



/s/ Robert B. Stewart
Of Counsel